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Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES

Richard John Florance, Jr.,
Defendant-Appellant-Petitioner,
v.

BRENDA TAYLOR,
Plaintiff-Appellee-Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

ORIGINAL PETITION FOR A WRIT OF CERTIORARI

RICHARD JOHN FLORANCE, JR,
1908 VASSAR DRIVE
RICHARDSON, TEXAS, 75081

Questions Presented

STATUTORY CHALLENGES
State Statutory Scheme—Due Process, Separation of Powers

1. Do TEX. GOV'T CODE §§ 51.901, 51.902, and 51.903 violate Due Process or Separation of Powers?

   Focus: § 51.901

   a. What does "not ... provided for" mean?

   b. Does the "not ... provided for" (absence of permission) standard give Notice of prohibited conduct?

   c. May the "not ... provided for" standard ever be lawful basis for a fraud claim in this state?

   d. Does the "rational connection" test even apply where both premise and conclusion are matters of law?

   Focus: §§ 51.902, 51.903 (each)

   e. May ***any*** state statutory scheme dispense with Notice and/or the opportunity to be heard?

   Focus: §§ 51.901, 51.903 (*in pari materia*)

   f. Where there is neither Notice nor opportunity to be heard, is the presumption of fraud rendered irrebutable?

   g. Is it really a *judicial* process where the legislature dictate, via forms, the pleadings, affidavits, and orders?

Subject Matter Jurisdiction—State Courts

2. Does RJF's claim, lien, or Notice of Lien raise anything but an exclusively federal *in rem* matter?

   (May a tortfeasor, her lawyer, and/or the state judge redefine ancient law or dictate a claimant's theory of the claim, at all, much less *ex parte*?)

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Petition for a Writ of Certiorari

RJF petitions for a writ of certiorari to the state appellate court as follows:

Citations to decisions below

"___ SW3d ___, 04-10-07" (per S. Ct. of Tex. website)

Basis for Jurisdiction

(i) Date Judgment To Be Reviewed Was Entered
10 April A.D. 2007

(ii) Rehearing, Extension
Petition for Review (Writ of Error), Supreme Court of Texas, No. 07-0376. Filed: 1 May. Petition denied: 22 June. [**22 June** + 90: 20 September A.D. 2007]

(iii)Rule 12.5 N/A

(iv)Statutes, Jurisdiction
Review by certiorari of decree from highest state court in which a decision may be had, where state statute validity is raised. 28 U.S.C. §§ 1257(a), 2101(c).

(v) Regarding notice of statutory challenge, Rule 29.4(b)
28 U.S.C. § 2403(b) may apply. This petition is served on the Attorney General for State of Texas and on the Solicitor General. The statutory challenges were raised at trial and on appeal, and service on State of Texas and on United States has been made throughout.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

When Federal Questions Were Raised

By RJF—Upon the first opportunity to participate.

RJF filed his verified Bill of Exceptions and Notice of Appeal upon receipt of the trial court's final order, which was the first time he had Notice that the proceeding even existed.

By law—The instant the state court asserted authority.

As a matter of law, this process raised federal questions the instant the state court assumed jurisdiction over this exclusively federal *in rem* matter, which would be about the same time the state court proceeded without Notice.

Related Case

In re A.F. (county court, mandamus, "no jurisdiction"). [1]

County Clerk's Office's criminal Record-tampering

As detailed in No. 06-777, the Collin County Clerk's Office criminally tampered with that Record, twice, by twice refusing to file that Motion for New Trial. This also amounts to intent to deny access, both on appeal and at trial.

RJF's Notice of Lien

The deputy(ies) who did the original tampering was (were) in TAYLOR's Office and under her supervision. RJF had and has no intention of financing criminal conduct engaged under color, especially that which victimizes his family, too. Let the Clerk who tolerates (encourages, even commits her own) criminal Record-tampering absorb the cost of the preparation of that Record for appeal. The criminal Record-tampering gave rise to the claim, which, in turn, gave rise to the perfected lien. Moreover, since federal law *requires* the filing of a Notice of Lien, RJF did exactly that.

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[1] Potentially dependant cases: Texas v. RJF, No. 07-40130 (5th Cir.) (appeal of Remand of Removal of the related criminal charge); State v. RJF, No. 05-07-00088-CR (Tex. App.—Dallas) (State's appeal of the related criminal case; dismissed—statutory vagueness, shift of burden of proof); RJF v. Buchmeyer, et al., No. 3:07-CV-0125-M (N.D. Tex.).

TAYLOR's "motion"-based original proceedings

TAYLOR filed her *first* "motion" in the *county* court, which has no jurisdiction over such claims, by way of co-opting a case to which she was never a party. *See* No. 06-777.

This *second* "motion" was filed in the *district* court. Facially defying Due Process, § 51.903(c) purports to allow secret, *ex parte*, no Notice proceedings, and that's exactly how TAYLOR and the 401st District Court proceeded.

The trial court's "findings" and order

Welcome to Texas, the "No Thinking Required" zone. An *affirmative* finding of a claim against property is required. *See* § 51.901(c)(2). But the court found in the *negative*. *See* item (4). *Cf.* § 51.903(g). And, item (1): (i) is a "finding" of law not fact, (ii) tracks the *form*, § 51.903(g), which rewrites the *statute*, § 51.901(c)(2)(A), and (iii) is flat out wrong.

Argument

STATUTORY CHALLENGES

1. Do TEX. GOV'T CODE §§ 51.901, 51.902, and 51.903 violate Due Process or Separation of Powers?

Section 51.902 addresses "judgment liens", so it's not directly relevant, but it's helpful to see the full scheme.

a. What does "not ... provided for" mean?

The perfect clarity problem.

On first pass, it is very clear that "not ... provided for" means "permission required". This is what raises the lack of Notice problem, in that nothing is *prohibited.*

THE STATUTORY LANGUAGE.

(c) For purposes of this section, a document or instrument is ***presumed to be fraudulent*** if:

(2) the document or instrument purports *to create a lien or assert a claim against real or personal property or an interest in real or personal property*

and:

(A) is **not** a document or instrument **provided for** by *the constitution or laws of this state or of the United States*[.]

§ 51.901(c)(2)(A) (all emphasis added).

THE LANGUAGE OF THE "SUGGESTED FORM".

(1) IS **NOT provided for** by *specific state or federal **statutes** or constitutional provisions*; ... ***or*** [2]

(4) IS *NOT asserted against real or personal property or an interest in real or personal property.* There is no valid lien or claim created by this documentation or instrument.

§ 51.903(g) (all emphasis added).

To read the form *in pari materia* with the statute, it is impossible to miss the egregious clarity in the thought that "laws" means "legislation and only legislation"; hence, that unless the *legislature **give permission*** for the lien/claim/document/instrument/etc., it is to be ***presumed fraudulent***.

So, due to its perfect clarity, the "not ... provided for" standard is vague, for it provides no Notice of any ***prohibited*** conduct. *See* **b.**, *infra*.

The lack of clarity problem.

WHAT IS TESTED?

What is it that is tested by the "not ... provided for" standard: the lien/claim or the document/instrument? [3]

WHAT IS THE SCOPE?

To include the term "laws", does "not ... provided for" refer to judicial, legislative, or administrative authority? One might originally presume that "laws" refers to all recognized authority, as in judicial, legislative, and administrative. But, as identified, the "suggested form" rewrites "the constitution

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[2] This "or" is left out of the signed order, but so is the "and".

[3] This question is even more pronounced when analyzing TEX. PENAL CODE § 32.49 in conjunction with § 51.901(c)(2)(A).

or laws of this state or of the United States", *see* § 51.901(c)(2)(A), as "specific state or federal statutes or constitutional provisions." *See* item (1). [4] So, per this trial judge, *and* the appellate court, *and* the state supreme court, a presumption of fraud is still *justified* even in the face of application of a treaty, which is a legislative by-product but not a "specific ... statutory ... provision", or of judicial doctrines, including ancient matters of international law or of Common Law, or of administrative rulings. Thus, ***every*** lien, claim, document, or instrument not specifically and previously authorized by State or Federal *legislation* is now presumed fraudulent in Texas. For example, asserting a Common Law fraud claim is now the act of fraud! [5]

WHEN IS IT TESTED?

But even this hardly scratches the surface. Presume a lis pendens filing. Now, is that lien or claim (or is it document or instrument?) "not ... provided for" where venue is improper, too, or just where there's no standing, personal jurisdiction, or subject matter jurisdiction? Is it "not ... provided for" where Due Process fails, for any reason, e.g., denial of access, no Venire available, statutory vagueness? Is it "not ... provided for" where the statute of limitations has run? Is it "not ... provided for" where the advisory panel

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[4] Surely, Machiavelli would adore the modern city-state mentality.

A body politic doesn't create a constitution so that they may grant themselves the permission or right to do anything. A body politic creates a constitution to grant certain limited authority to certain *agents* to act for and on behalf of that body politic. Constitutions do not create rights. Rights well pre-exist constitutions. Constitutions recognize rights in order to add additional prohibitions on the *agents*. Thus, it makes no sense whatsoever to look to a constitution to find specific permission for the *people* to do anything. Similarly, where all such authority originates with the people, it makes no sense whatsoever to look to statutes to find specific permission for the *people* to do anything. To apply the "not ... provided for" idea to restrict the *people*, not the government, but the *people*, defies the principle that all that is not clearly prohibited is lawful.

[5] I.e., *this* state legislation even overrules "saving to suitors"!

pours the plaintiff out? Is it "not … provided for" where the plaintiff's victory is reversed on appeal?

ADDING "GOOSE/GANDER" TO THE "WHEN" QUESTION.

Presume a criminal claim. Is *State* presumed to have committed fraud every time a defendant is acquitted, has a conviction reversed, or is released on habeas?

The facial absurdity of the "choice of law" problem.

This one foreshadows the "rational connection" test, but it fits here, too. Let's say the injured party is in Scotland, and he files his lien or claim (or is it document or instrument?) against American Airlines in Texas. That lien/claim/document/instrument has existed in Scotland for 2,000 years, but it's never been heard of before in this state. Since it's "not … provided for" in only two of the world's choices of law, to file that lien/claim/document/instrument in Texas is to risk being sued for fraud, via an *ex parte* star chamber! [6]

The standard is vague and overbroad.

The "not … provided for" standard is egregious, offensive, vague, and overbroad on its face.

b. Does the "not … provided for" (absence of permission) standard give Notice of prohibited conduct?

Ancient standard—Notice of prohibited conduct.

It used to be that conduct had to be *prohibited* to be actionable. *Cf. Grayned*, 408 U.S. at 108. *See also Carhart* (citing *Grayned*).

Texas standard—permission required in advance.

Section 51.901(c)(2)(A) sets up the exact opposite standard: "permission required". [7] Thus, a lien or claim (or is it document or instrument?) that is "not … provided for" is not only actionable, but also presumed ***fraudulent***.

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[6] Where demand for release of the claim "not …provided for" is made and not satisfied, criminal charges may arise. TEX. PENAL CODE § 32.49.

[7] This understanding is presumed but is also the most likely.

The "not ... provided for" standard limits government, not the people.

A "not ... provided for" (permission required) standard does exist. However, it applies to legislatures, executives, jurists, and fiduciaries. [8] So, unless we're at that stage of manifest departure from the founding principles, i.e., unless government is (legislatures are) completely *un*limited and commercial conduct is presumed ***fraudulent*** where prior permission is not affirmatively granted, then such is not a standard by which to evaluate commercial conduct.

The "not ... provided for" standard gives no Notice.

In short, the "not provided for" (absence of permission) standard gives no Notice of ***anything*** that is *prohibited.*

c. May the "not ... provided for" standard ever be lawful basis for a fraud claim in this state?

Why this statutory scheme even exists.

The reason for the statutory scheme is understandable. Certain people have gone nuts filing "commercial liens", e.g., of the Van Dyke variety, against every one in sight. So, providing a remedy for unjustified claims may be in order.

However, this "cure" fully ***invites*** the very activity it purports to restrict! The people have been taught the language of the Constitution for some 220 years, now. Applying those standards, many people find government completely out of control, even lawless, and they're not waiting for or expecting government to fix itself. Where their expectations that judicial activity would provide relief have been repeatedly proved unrealistic, those people have sought other means of redress, and of self-defense. When one of Van Dyke's early "commercial liens" "worked", word spread like wildfire. In response to the Texas version of that commercial activity throughout this state, the Texas

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[8] It's application in the EEOC context is also highly questionable. A "permission to sue" letter is not an American idea.

legislature defied one of the most ancient principles of law. They declared fraudulent *not* something that is ***prohibited***, *but rather* that for which ***no permission*** has been granted.

Clandestine purposes disguised as fraud don't work.

It's a wonder this issue hasn't come up long before now. Statutory schemes using fraud as a disguise for some other clandestine purpose have not survived challenge. *Oyama* (facially discriminatory application of fraud vitiates the statute); *Pollock* (same); *Munson* (regulation of phone solicitation under the disguise of fraud didn't survive challenge); *Riley* (presumption of fraud was not designed to discourage fraud but to reduce fees charged by fundraisers).

Here, the clandestine purpose is to justify targeting those people who have made themselves politically disfavored by demanding such things as lawful, limited government. [9]

"Cure" worse than, additional cause of, the "disease".

With or without the clandestine purpose, can any "cure" that tries to reverse the ancient and still applicable standard of ***prohibited*** conduct ever withstand challenge? It is still the *government* that must first prove that it is within its authorized scope before acting, not the *people*. *Cf. Hamdan*. It is still the *government* that is restricted to a "permission required" standard, not the *people*.

In short, this state is not yet to the stage of complete role reversal. It's clear that this state is working like mad to revert to the Neanderthal, city-state mentality, where the people exist at the behest of the state. But, this state and its government still exist solely on and by the fully voluntary support of its citizens. The instant the citizens need prior permission, they no longer act voluntarily.

Therefore, there's no way that a "not … provided for"

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[9] The facially discriminatory focus on members of the so-called ✱ **REPUBLIC OF TEXAS** ✱ is made manifest in the criminal case. *See* State v. RJF, No. 05-07-00088-CR (Tex. App.—Dallas). It matters not at all whether the label even applies. All that has to happen is for such to be alleged. The criminal charge is then justified.

standard can ever apply to limit the *people*, much less justify a *presumption* of fraud regarding commercial activity, in this state. The "not ... provided for" standard exists, but to limit *government*, i.e., to keep legislators, executives, jurists, and fiduciaries within the authorized scope of their offices. To limit the *people*, there must be Notice of *prohibited* conduct.

d. Does the "rational connection" test even apply where both premise and conclusion are matters of law?

Section 51.901 has an odd structure.

To trigger the presumption of fraud, the claimant must first negate the exceptions. The key exception here is the "not ... provided for" one. So, in order for TAYLOR to obtain to a presumption of fraud, she must first prove that the lien or claim (or is that document or instrument?) is "not ... provided for". [10] If the statute survives challenge, i.e., if the multiple aspects of vagueness and its defiance of Due Process and Separation of Powers are not fatal to that scheme, then it's still the case that all of RJF's claim, lien, document, and instrument *are* "provided for". *See, e.g.,* TEX. PENAL CODE § 1.03(c); *Mr. Dean*; *Sosa*, and *Bivens*. Thus, as a matter of law, the presumption never arises.

Presume that the presumption arises.

This is academic, but it helps illustrate the problem. The statute makes only a generic reference to fraud. So, it's not clear whether the presumption, in the civil fraud context, gives rise to an act, an intent, or both. If it gives rise to an

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[10] Proving "absence of permission" would require introducing every statute, judicial opinion, attorney general opinion, administrative ruling, etc., establishing that each does "not ... provide for" the claim, etc. The alternative to expert testimony in perpetuity, i.e., ad nauseam, on the legal question is an instruction. An instruction saying that the claim, etc. is "not ... provided for" not only is wrong, but also relieves State's burden, which shifts the burden. *Cf. Mullaney*. Such an instruction also establishes, as a matter of law, a "mistake of law" defense, which then also relieves the defendant of his burden.

act, then, per *Ulster County*, RJF carries the burden to show that there is no "rational connection" between the "basic fact" proved and the "elemental fact" presumed. If it gives rise to an intent, then, to borrow from *Leary*, 392 U.S. at 36, TAYLOR has to overcome the presumption of irrationality.

THIS STATUTE CONNECTS "BASIC LAW" TO "LEGAL CONCLUSION", NOT "BASIC FACT" TO "ELEMENTAL FACT".

RJF's burden carries itself. Where the premise is a matter of law, not fact, we're instantly beyond the scope of an evidentiary presumption, which is a rule that deals with *facts*. What is "not ... provided for" in or by any body of law is not a matter of fact, but of law. In short, what this statute connects is a "legal issue" to an ultimate "conclusion of law", not a "basic fact" to an "elemental fact".

IN SHORT, IN TEXAS "NEW" IS "FRAUDULENT".

To complete this analysis by making, and testing, that connection, here are the premise and the conclusion. The *premise* is that the lien/claim/document/instrument is "not ... provided for"; hence, there's no permission for it (yet); it's a new idea, with respect to those *two* "choices of law", as just *two* of the world's "choices of law". The *conclusion* is that such lien/claim/document/instrument is fraudulent.

Is it "rational" in our common experience for "new" to be "fraudulent"? Were ***these*** "new" claims "fraudulent"?

- Suing McDonalds over hot coffee or the nutritional content of the food.
- Jesse Owens' even thinking about competing in the 1936 Olympics.
- Gideon's merely requesting appointment of counsel for his defense.
- Rosa Parks' daring to sit at the front of the bus.
- Miranda's not wanting to be compelled to testify against himself in a custodial interrogation.
- Roe's daring to challenge the ***very*** one-sided Texas abortion statute (the doctors were charged, but not the

would-be mothers; the conspirators, but not the principals), which ruling revolutionized when the "right to life" attaches.

- Dred Scot's merely wanting citizenship.
- Brown's wanting equal educational opportunities.

All of these claims were "not ... provided for" before they were asserted. Therefore, in Texas, each of these people would be *presumed* to have engaged in ***fraud*** by merely even asserting the lien/claim/document/instrument/whatever.

SUMMARY—RJF'S BURDEN.

The presumption never arises, as a matter of law, because, even if commercial acts now need permission in advance, the claims, liens, documents, and instruments at issue were "provided for" even before this nation existed. But, to contort our minds just long enough to address the presumption, it takes a premise of "not ... provided for", which is a matter of law, not fact, and conveniently produces the legal conclusion on the ultimate issue, namely that the claim, etc., that is "not ... provided for" is fraudulent. To say that "new" is "fraudulent" is facially irrational.

But, RJF's burden is satisfied long before this step. Presumptions connect "basic facts" with "elemental facts". So, where the premise and the conclusion are both matters of law, the "rational connection" test fails instantly.

SUMMARY—TAYLOR'S BURDEN. PRESUMPTIONS OF INTENT ARE, THEMSELVES, PRESUMED IRRATIONAL.

Regarding the intent side of the analysis, TAYLOR must overcome the presumption of irrationality. How that happens where the test cannot even be applied is a good question. Where TAYLOR has to establish a "rational connection" between a "basic fact" and an "elemental fact", and where there are no facts at issue, TAYLOR's burden is impossible.

Summary—no "rational connection".

There is no issue of any relationship between any "basic fact" proved and any "elemental fact" presumed, here. The

premise is a matter of law, and the conclusion is the ultimate issue of law. So, the test can't even be applied. But, if the test were to be applied, then we'd have to be able to conclude that in our common experience, "fraud" rationally follows from "new". To say that "new" is "fraud" is irrational.

e. May *any* state statutory scheme dispense with Notice and/or the opportunity to be heard?

The perennial Question—§§ 51.902(c), 51.903(c).

The perennial Answer. *Hamdi. See also Milliken*; *International Shoe*; *Armstrong*, 380 U.S. at 552; *Sniadach*; *Boddie*; *Fuentes v. Shevin*; *N. Ga. Finishing*; *Jones*.

Regarding equity, in particular.

TEX. RS. CIV. P. 680, 681, 686, 690, 693, 694.

Would this abuse stop if States were sued for it?

Introducing a new cause of action that's "not ... provided for". Where parties are sanctioned for frivolous litigation, States are liable for frivolous legislation. Due Process rights, in particular Notice and access, are fully recognized. We're not talking about any speech or debate, but rather conduct under color directly affecting commerce *and* property rights in ***incessant*** defiance of very well established principles. The state courts had their chance to stop this, and didn't.

f. Where there is neither Notice nor opportunity to be heard, is the presumption of fraud rendered irrebutable?

May fraud be presumed, at all?

To presume fraud is to relieve the claimant of the burden of proof. *Madigan,* 538 U.S. at 620 (state has burden to prove misleading nature of solicitation; defendant does not have burden to prove lawfulness); *Grogan* (bankruptcy setting; what evidentiary standard must the creditor satisfy for proving nondischargeability per fraud?—preponderance; hence, fraud must be proved); *Heiner*, 285 U.S. at 329 (tax

case; irrebutable presumption issue); *Mullaney*; *Johnson* (instruction amounted to directed verdict of guilt relieving State of its burden).

If so, is the presumption rendered irrebutable, here?

This whole scheme operates on a *res ipsa loquitur* theory. "It exists, therefore it's fraudulent." The liens, claims, etc., asserted by the politically disfavored exist; therefore, those liens, claims, etc., are fraudulent. § 51.901(c). This conclusion is all the more compelled where the statute not only specifically targets the politically disfavored but also completely shuts out the lienholder from participating in the proceedings. § 51.903(c).

Irrebutable presumptions violate Due Process.

Elkins; *Salfi* (in particular part III, discussing why *Salfi* is distinguished); *LaFleur*; *Vlandis*; *Stanley*. [11]

g. Is it really a *judicial* process where the legislature dictate, via forms, the pleadings, affidavits, and orders?

The legislature dictate the entire case.

The statutory scheme includes forms for the pleadings, affidavits, and orders. Add no Notice or opportunity to be heard, i.e., complete denial of access, via the *ex parte*, star chamber process, § 51.903(c), and we have a Bill of Pain and Penalties procedure. It's a legislative summary judgment that depends not on fraud, or even on the allegation of it, but solely on the mere allegation that the lien or claim asserted has not been pre-approved, i.e., there is no permission for it, where "permission" is a *political* question. There is no factual determination, but merely the politically pre-determined, irrebutable presumption of fraud. § 51.901(c).

The legislature invade the province of the judiciary.

Amazingly, the judiciary likes it! But, if all one needs are

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[11] Not all irrebutable presumptions violate Due Process. *See, e.g., Michael H. v. Gerald D.*, 491 U.S. 110 (1989); *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976).

the legislatively pre-approved forms, why involve a court? Why not just file publicly the legislatively pre-approved paperwork? The judicial system is an *adversarial* system. If there is to be no debate, why involve the judiciary, at all? If legislative, purely political, non-justiciable pre-determination is all that matters, why is the legislative "order" inadequate? And, where the political pre-determination, alone, is confessed to be inadequate, by the mere recognition of the need to involve a court, where is that court's authority where there is neither Notice nor opportunity to be heard? The sham judicial process all the more exposes the Separation of Powers problem, here.

Subject Matter Jurisdiction—State Courts

2. **Does RJF's claim, lien, or Notice of Lien raise anything but an exclusively federal *in rem* matter?**

   (May a tortfeasor, her lawyer, and/or the state judge redefine ancient law or dictate a claimant's theory of the claim, at all, much less *ex parte*?)

   Rule 9.

   A responding party may certainly *raise objections* regarding capacity, fraud, mistake, condition of mind, conditions precedent, official documents or acts, judgments, time, place, special damages, and admiralty-maritime issues. *See* FED. R. CIV. P. 9. But neither the tortfeasor nor the court may *rewrite* the claimant's theory of the claim.

   The claim.

   The Collin County Clerk's Office criminally tampered with the Record in the case that became No. 06-777. Twice those clerks refused to file that Motion for New Trial. In addition to criminal Record-tampering, these acts also intended to deny access, to both the appellate and trial courts. Let the Clerk who tolerates (encourages, even commits her own) criminal Record-tampering absorb the cost of the

preparation of the Record for the appeal. Where *Ponzi* recognizes different planes of jurisdiction, so does RJF.

The lien.

The lien both attached and perfected by operation of law. *Mr. Dean*.

The Notice of Lien.

Notice of Lien has been ***required*** since at least 1883. *Vance* ("The strong current of modern legislation and judicial opinion is against the enforcement of secret liens on property."). *See also Estate of Romani*; *McDermott*; *Estate of Donnelly*; *Speers*; *Pioneer Am. Ins. Co.*; *Security Trust*; *Holt*; *Thompson*; *Fisher*.

"Well-pleaded Complaint" Rule, on the flip side.

The typical application is prevention of Removal. *Franchise Tax Bd. of Cal.*. The question focuses on what claims (theories of the case) the claimant has asserted. *Louisville & Nashville R. Co.* In *MetLife*, the issue of complete preemption is addressed, as well as the touchstone issue of the intent of the Congress.

Thus, where a claim may be stated wholly within *state* jurisdiction, *see, e.g.*, *Taylor* (ejectment claim filed in federal court; dismissed; state law based claim), whether that's the claimant's intention or not, it must also be the case that a claim may be wholly within *federal* jurisdiction. *Cf. Oneida Indian Nation* (the claim asserted was based on a claim wholly independent from state law).

Ultimately, two sources of intent control the threshold analysis: (A) the claimant's, and (B) Congress'. The Notice of Lien shows RJF's intent astronomically clearly. So, we turn to § 1331, § 1332, and § 1333(1). These are clear, also.

Complete pre-emption.

Where state and federal law collide, federal law pre-empts state law. *English*, 496 U.S. at 79, citing *Florida Lime*, 373 U.S. at 142-43, *Hines*, 312 U.S. at 67, and *Maryland v. Louisiana*, 451 U.S. at 747. Pre-emption is a defense, unless it's a complete preemption. *MetLife*. It's

very difficult to see how this claim, lien, and Notice of Lien could ever fall outside the scope of complete preemption.

No state court jurisdiction.

As RJF has told the state courts, there is no jurisdiction in any state court to curse or to bless RJF's claim, lien, or Notice of Lien. If the district court had compelled TAYLOR, the elected Collin County Clerk, whose professional job is to make sure that the Notice requirement is satisfied, to give RJF Notice of her "motion", RJF most assuredly would have Removed that "motion". *Helling* (problem *prevention*); *H. J. Inc.* (same); *Schall,* 467 U.S. at 298-300 (same); *Pulliam* (same); and *Juidice* (bad faith and harassment *both* justify *prevention*). Preventative relief in equity exists. *Cf. United Mine Workers*; § 1450. But, really, how many judges throughout this state need, much less want, problem *prevention* assistance from the *pro se* community against problems created for them by the bar membership, many of whom are also the legislators?! [12]

Synopsis

This is an exclusively federal *in rem* matter.

All of this because the Clerk's Office refused to file the Motion for New Trial, not just once, but *twice*, and then refused to accept ***any*** responsibility for the violations. The commercial responsibility is a *federal* matter.

The statutory scheme offends Texas, America, common sense, Due Process, and Separation of Powers.

The Alamo. San Jacinto. The Battle of the Bulge. D-Day (Normandy). Gotta kinda wonder what any of that was about when we read the inclusion, in the Texas statutes, as now ***fully*** supported by the state trial, appellate, ***and*** supreme courts, of the "not … provided for" standard.

Upon additional reflection, the first pass impression gives

[12] There ***are*** a few; hence, once again, the exception proves the rule.

way to increasing uncertainty as to the what, when, and scope of the "not ... provided for" standard.

The scheme cleverly builds the political angle into the claim by disguising it as an issue of law that pretends to be an issue of fact, which is then used as the premise for an evidentiary presumption. In other words, the legislature use the "not ... provided for" political angle as the "factual" premise for an evidentiary presumption. That premise is not satisfied by any *legal* analysis, but rather solely by *alleged* (it doesn't even have to be real, just *alleged*) *political* viewpoint or association of the party asserting the lien or claim (or is it document or instrument?). Once the "not ... provided for" standard is satisfied, the scheme gives rise to a presumption of fraud. Thus, there are two ways to read this. Either (A) in Texas, the mere allegation of politically disfavored affiliation gives rise to a presumption of fraud, or (B) in Texas, "new" is presumed "fraudulent".

All the state courts up the line have upheld that presumption. This suggests, then, that in their common experience, there's a "rational connection" between (A) the premise, that the lien/claim/document/instrument/whatever is "not ... provided for", which is a legal question not a "basic fact", [13] and (B) the conclusion of fraud, which is the ultimate legal conclusion not an "elemental fact". Given no Notice or opportunity to be heard, the presumption is made irrebutable.

Thus, the victim of the tort(s) committed under color, who doesn't even get Notice of the proceeding intent on destroying his commercial claims, is burdened with proving, via the *appellate* process, "not fraud", which is a shift of the burden of proof coupled with denial of access.

Regarding the proceeding, generally, RJF views it as a declaratory judgment matter; hence, that there is a final, appealable order. The uniqueness of this matter is such that

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[13] The closest we get to a fact is a political affiliation of the party asserting the lien, claim, etc., which doesn't have to be *fact*, just alleged.

even though the *form* order says that it *doesn't* reach the merits, it's impossible for that really to be the case. Just another by-product of the vagueness permeating this scheme.

That proceeding isn't even really *judicial*. It's all pre-programmed legislatively. "No Thinking Required." The statute provides ***all*** the pleadings, affidavits, and orders. So, based on a party's *alleged* political affiliation, his lien, claim, etc., is legislatively, not *judicially*, but legislatively pre-determined to be fraudulent; i.e., "No Facts Required", either.

Yet, in the final analysis, there *is* justice. This scheme is so obviously driven by a self-defeating political agenda that it breaks itself apart when it is subjected to a competent legal analysis, i.e., analysis suited for actual public policy. Fundamentally, this scheme doesn't even competently address the Hartford-Van-Dyke-style "commercial liens" toward which this language was aimed. Even ***if*** Texans were under "permission required" public policy these days, the claims on which those "commercial liens" are based are ***fully*** "provided for". Those people just didn't know how or where.

Key, while the mere thought of using the "not ... provided for" standard against the people is intensely angering, no one among the politically targeted group can help but double over in hilarity upon reading the legislatively-promulgated, attorney-reproduced, and judicially-approved *form* order. As common sense, alone, would suggest, and as the *statute* requires, there ***must be*** a claim on property. This "elemental fact" is then ***conjoined with*** the negation of ***all*** three exceptions to give rise to the presumption. ***But***, at item (4), the *form* reads, ***disjunctively***, "IS ***NOT*** asserted against real or personal property or an interest in real or personal property." (emphasis added). [14]

Given the "no Notice", *ex parte* features of this scheme, this is a lot like swinging at the T-ball, and missing.

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[14] West Virginia copied this to the letter. Kansas caught and corrected this "IS NOT" problem but not the ***disjunctive*** problem. *See* App. B.

Remedies Requested

RJF requests

1. That this Court grant this petition, issue the writ of certiorari and take jurisdiction of this matter;
2. That this Court rule TEX. GOV'T CODE §§ 51.901, 51.902, and 51.903 void and unenforceable, for violations of Due Process and/or Separation of Powers;
3. If the statutes are valid and enforceable, that this Court rule that the underlying claim, lien, and Notice of Lien constitute an exclusively federal *in rem* matter;
4. That this Court vacate the appellate court's judgment and remand this case to the district court with instructions to dismiss for lack of jurisdiction;
5. The opportunity to brief any additional issues the Court may identify;
6. The non-argument calendar. Oral argument is not expected to aid in the resolution of these issues;
7. That costs be taxed to TAYLOR; and
8. Any and all other relief at law, in equity or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

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Brief, summary analysis of 54 of the various state legislative responses to the various versions of the lien-filing phenomenon.

Appendix A—This case

Rule 14.1(i)(i)—Appellate Opinion and Judgment

2007 April 10—Opinion

AFFIRM; Opinion filed April 10, 2007

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-06-00992-CV

IN RE A PURPORTED LIEN OR CLAIM AGAINST COLLIN COUNTY CLERK BRENDA TAYLOR

On Appeal from the 401st Judicial District
Court Collin County, Texas
Trial Court Cause No. 401-2217-06

OPINION

Before Justices FitzGerald, Richter, Francis
Opinion By Justice FitzGerald

The trial court found Richard John Florance, Jr.'s "Florance's First Notice of Lien" fraudulent, as defined by section 51.901(c) of the government code, in its "Judicial Findings of Fact and Conclusions of Law Regarding a Document Purporting to Create a Lien." Representing himself, Florance appeals that decision. We affirm the trial court's findings of fact and conclusions of law.

Brenda Taylor is the Collin County Clerk. On December 15, 2005, Florance filed "Florance's First Notice of Lien" in the Collin County records. It referred to cause number 001-1412-05 in County Court at Law No. 1, styled *Amanda Florance, a minor, and Richard John Florance. Jr., next friend v. State of Texas, a federal corporation.* In that case, Florance sought mandamus relief and a declaratory judgment challenging the Piano Municipal Court's jurisdiction [⊥ 2] over his daughter's class C misdemeanor citation for being a minor in possession of alcohol. *See in re ,A.F.*, a minor, No. 05-05-01435-CV, 2006 WL 1728035 (Tex. App.-Dallas June 13, 2006, orig. proceeding [mand. denied]), *cert. denied*, 127 S. Ct. 1 326 (2007). Florance sought to appeal the county court's decision in that case.

Florance states in his brief that he requested the Collin County Clerk to prepare the clerk's record. Florance initially refused to pay the $129 fee; however, he paid the fee on December 15, 2005, when faced with dismissal of his appeal for want of prosecution. [1] On December 15, 2005, as noted above, Florance filed "Florance's First Notice of Lien," purporting to create a lien for $129 against Taylor on "all property and property interests whether found in or beyond this state, whether real, personal or intangible, in which you have any right, title or interest, as security for payment of this claim."

On December 22, 2005, Taylor's counsel sent Florance a certified letter, return receipt requested, putting Florance "on notice" that the filing of "Florance's First Notice of Lien" was "illegal" and referring to sections 51.901(c), 51.902, and 51.903 of the government code. In addition, counsel advised

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[1] *See* TEX. R. APP. P. 38.1f) ("In a civil case, the court will accept as true the facts stated unless another party contradicts them.")

[N.B. Apparently, the court's own Record doesn't suffice as adequate basis for contradiction. RJF]

Florance that "it may also be a criminal offense to file a fraudulent Lien or Claim," referring to section 32.49 of the penal code. Counsel requested Florance to withdraw "Florance's First Notice of Lien" or, as provided by section 32.49, within twenty-one days of the receipt of the letter, execute a release of "Florance's First Notice of Lien." *See* TEX. PEN. CODE ANN. § 32.49(a)(2) (Vernon 2003). Counsel also stated that, absent the withdrawal or release, he would "seek all legal recourses available to the County Clerk . . .." The return receipt shows the December 22 letter was delivered on December 23, 2005, and that Amanda Florance signed for it. [⊥ 3]

On April 6, 2006, Florance filed "Florance's Withdrawal of Notice of Lien." [2] Subsequently, pursuant to section 51.903, Taylor filed her "Motion for Judicial Review of Documentation or Instrument Purporting to Create a Lien or Claim" in the 401st Judicial District Court. After hearing the motion, the trial court signed its findings of fact and conclusions of law.

Six days after the hearing, Florance filed with the district clerk "Florance's Verified Bill of Exceptions and Notice of Appeal." In this document, Florance states, "The First Notice that I received that this matter even existed is the 'final order.' I specifically assert my right to commercial Due Process."

Section 51.901 provides a procedure to determine whether a lien is fraudulent. Specifically, a document or instrument purporting to create a lien or assert a claim on real

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[2] [N.B. This was responsive to the 1 April Sheriff's Notice of the existence of the criminal charge. It clearly distinguishes "withdrawal" from "release", thereby raising the obvious question: how is it, exactly, that one "withdraws" Notice, once it is given? In short, RJF extended to the DA, from ***very*** early on, the *preventative* option of dismissing. (This DA did dismiss the NBC *Dateline* pedophile cases from Murphy.) But, it took court action to get RJF's criminal case dismissed. RJF]

or personal property or an interest in real or personal property is presumed fraudulent if it:

> (A) is not a document or instrument provided for by the constitution or laws of this state or of the United States;
>
> (B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or
>
> (C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution of laws of this state or of the United States.

TEX. GOV'T CODE ANN. § 51.901(c)(2)(A)-(C) (Vernon Supp. 2006). If a county clerk believes in good faith that a document filed with the county clerk to create a lien is fraudulent, the clerk shall:

> (1) request the assistance of the county or district attorney to determine whether the document is fraudulent before filing or recording the document;
>
> (2) request that the prospective filer provide to the county clerk additional documentation supporting the existence of the lien, . . .; and
>
> (3) forward any additional documentation received to the county or district [⊥ 4] attorney.

Id. § 51.901 (d).

Section 51.903 is titled "Action on Fraudulent Lien on Property." Section 51.903(a) provides a "suggested form" for a motion, verified by affidavit, that a person who believes that a purported lien is fraudulent may file with the district

clerk. *Id.* § 51.903(a) (Vernon 2005). Section 51.903(c) provides that a motion under section 51.903 may be ruled on by a district judge having jurisdiction over real property matters in the county where the subject document was filed. *Id*, § 51.903(c). It also provides that "[t]he court's finding may be made solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence." *Id.* "The court's review may be made ex parte without delay or notice of any kind." *Id.* Section 51.903(e) provides that "the district judge shall enter an appropriate finding of fact and conclusion of law . . ." *Id.* § 51.903(e). Section 51.903(g) provides a suggested form order appropriate to comply with this section. *Id.* § 51.903(g). Here, the district Judge's findings of fact and conclusions of law track the statutory language, stating that the judge found that "Florance's First Notice of Lien" is fraudulent as defined by section 51.901(c); that it meets the requirements of section 51.901(c)(2)(A) through (C); and that "[t]here is no valid lien or claim created by 'Florance's First Notice of Lien."

In his sixth and eighth points, Florance argues that sections 51.901 and 51.903 violate due process because the presumption of fraud is "irrebuttable via no Notice or opportunity to be heard." Although not argued as a specific point, Florance states, "The first Florance knew of the matter was the receipt in the email [3] of the *ex.parte* judgment declaring something 'fraudulent.' " However, there is nothing in the record to show that Florance brought this complaint to the attention of the trial court. *See* TEX. R. APP. P. 33.1(a) (preservation of complaint requires making it to trial court by [⊥ 5] timely request, objection, or motion, and either ruling or refusal to rule by trial court). Florance filed his "Florance's Verified Bill of Exceptions and Notice of

[3] [N.B. "Mail", not "email". RJF]

Appeal" with the district clerk. There is nothing in the record to show he brought it to the district judge's attention, thereby making the judge aware of his issue of notice under this chapter and giving the judge the opportunity to rule on it. *See In re Davidson*, 153 S.W.3d 490, 491 (Tex. App.—Amarillo 2004, orig. proceeding) ("Showing that a motion was filed with the court clerk does not constitute proof that the motion was brought to the trial court's attention or presented to the trial court with a request for a ruling."); *Metzger v. Sebek*, 892 S.W.2d 20, 49 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (court not required to consider motion not called to its attention). Accordingly, Florance failed to preserve this argument for review.

We need not address Florance's first through fifth points, which offer irrelevant discussion regarding "maritime liens," "*in rem* matters," and the perfection of liens, without attacking the trial court's findings of fact and conclusions of law. *See Employers Cas. Co. v. Henager*, 852 S.W.2d 655, 658 (Tex. App.—Dallas 1993, writ denied) (unchallenged findings of fact are binding on parties and appellate court).[4] Florance's seventh point discusses section 51.902, which relates to a fraudulent judgment lien and is irrelevant to this case.

We affirm the trial court's "Judicial Findings of Fact and Conclusions of Law Regarding a Document Purporting to Create a Lien."

/s/ Kerry P. Fitzgerald
KERRY P. FITZGERALD
JUSTICE

060992F.P05

[4] [N.B. It's good law. Applying it, item (1) is an issue of law, thus self-preserving, *see also* Points 1-5, and item (4) is not only proposed by TAYLOR but also "not objected to" by her. RJF]

2007 April 10—Judgment

(Seal of THE STATE OF TEXAS)

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN RE A PURPORTED LIEN OR CLAIM AGAINST COLLIN COUNTY CLERK BRENDA TAYLOR	Appeal from the 401st Judicial District Court of Collin County, Texas. (Tr.Ct.No. 401-2217-06). Opinion delivered by Justice FitzGerald, Justices Richter and Francis participating.
No. 05-06-00992-CV	

In accordance with this Court's opinion of this date, the trial court's July 13, 2006 Judicial Findings of Fact and Conclusions of Law Regarding a Document Purporting to Create a Lien is **AFFIRMED**.

It is **ORDERED** that Collin County Clerk Brenda Taylor recover her costs of this appeal from Richard John Florance, Jr.

Judgment entered April 10, 2007.

/s/ Kerry P. Fitzgerald
KERRY P. FITZGERALD
JUSTICE

Rule 14.1(i)(ii)—Additional Orders

2006 July 13—Findings and Conclusions

FILED
06 JUL 13 AM 8:58
HANNAH KUNKLE
DISTRICT CLERK
COLLIN COUNTY, TEXAS
By /s/ DEPUTY

FILED
COUNTY COURT AT LAW
2006 JUL 13 AM 10:33
_____ CLERK
COLLIN COUNTY, TEXAS
By /s/ Deputy [1]

MISCELLANEOUS DOCKET NO. *401-02217-06*

	§ IN THE DISTRICT
	§ COURT
IN RE: A PURPORTED	§
LIEN OR CLAIM	§ *401st* JUDICIAL
AGAINST CLERK	§ DISTRICT
BRENDA TAYLOR	§
	§ COLLIN COUNTY,
	§ TEXAS

JUDICIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A DOCUMENT PURPORTING TO CREATE A LIEN

On this the 13th day of July, 2006, in the above-entitled and numbered cause, this Court reviewed a motion, verified by affidavit, of Collin County Clerk Brenda Taylor and the

[1] [N.B. Filestamp of the conformed copy filed in the County Court. *See* No. 06-777. RJF]

documentation attached thereto, No testimony was taken from any party, nor was there any notice of the Court's review, the Court having made the determination that a decision could be made solely on review of the documentation or instrument under the authority vested the Court under Subchapter j, Chapter 51 TEXAS GOVERNMENT CODE.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED THAT after reviewing Collin County Clerk Brenda Taylor's MOTION FOR JUDICIAL REVIEW OF DOCUMENTATION OR INSTRUMENT PURPORTING TO CREATE A LIEN OR CLAIM and documentation, the Court hereby **FINDS** that the documentation ["FLORANCE'S FIRST NOTICE OF LIEN"] is fraudulent as defined by TEXAS GOVERNMENT CODE §51.901(c) and:

(1) IS NOT provided for by specific State or Federal statutes or Constitutional provisions;

(2) IS NOT created by implied or express consent or agreement of the obligor, debtor or the owner of the real or personal property or an interest in the real or personal property, if required under the law of this State or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;

(3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under the Constitution or laws of this State or the United States;

(4) IS NOT [2] asserted against real or personal property or an interest in real or personal property. There is no valid lien or claim created by "FLORANCE'S FIRST NOTICE OF LIEN".

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[2] [N.B. This tracks the *form*, exactly. West Virginia copied this exactly. Kansas fixed this part of it. RJF]

[⊥ 2]

This Court makes no finding as to any underlying claims of the parties involved, and expressly limits its findings of fact and conclusions of law to the review of a ministerial act. The County clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation or instrument was originally filed, and the Court directs the County Clerk to index it using the same names that were used in indexing the subject documentation or instrument.

Signed this the *13* day of *July*, 2006

/s/ Mark J. Rusch
DISTRICT COURT JUDGE

JUDICIAL FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING A
DOCUMENT PURPORTING TO CREATE A
LIEN
T:\233\1\1\600\60137\Pleadings\
ORDERStrikeLien.wpd

2007 June 22—Supreme Court of Texas denied petition

(SEAL OF THE STATE OF TEXAS)
OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

RE: Case No. 07-0376 DATE: 6/22/20007
COA #: 05-06-00992-CV TC#: 401-02217-06
STYLE: RICHARD JOHN FLORANCE, JUNIOR
v. BRENDA TAYLOR

Today the Supreme Court of Texas denied the petition for review in the above-styled case.

MAIL TO: RICHARD JOHN FLORANCE JR.
1908 VASSAR DR
RICHARDSON, TX 75081

[Note: This Notice is in the form of a post card, for which the Pitney Bowes metering is as follows:
02 1A $ 00.26^{0}
0004392386 Jun 22 2007
MAILED FROM ZIP CODE 78701]

Rule 14.1(i)(iii)—Any Rehearing

No rehearing sought or granted.

Rule 14.1(i)(iv)—Any Judgment of different date

No judgment of date different from the opinion.

Rule 14.1(i)(v)—Statutes and Rules

The Statutes Challenged

Texas Government Code

SUBCHAPTER J. CERTAIN FRAUDULENT RECORDS OR DOCUMENTS

Sec. 51.901. FRAUDULENT DOCUMENT OR INSTRUMENT.

(a) If a clerk of the supreme court, clerk of the court of criminal appeals, clerk of a court of appeals, district clerk, county clerk, district and county clerk, or municipal clerk has a reasonable basis to believe in good faith that a document or instrument previously filed or recorded or offered or submitted for filing or for filing and recording is fraudulent, the clerk shall:

(1) if the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person against whom the purported judgment, act, order, directive, or process is rendered; or

(2) if the document or instrument purports to create a lien or assert a claim on real or personal property or an interest in real or personal property, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person named in the document or instrument as the obligor or debtor and to any person named as owning any interest in the real or personal property described in the document or instrument.

(b) A clerk shall provide written notice under Subsection (a):

(1) not later than the *second business day after* the date that the document or instrument is offered or submitted for filing or for filing and recording; or

(2) if the document or instrument has been previously filed or recorded, not later than the *second business day after* the date that the clerk becomes aware that the document or instrument may be fraudulent.

(c) For purposes of this section, a document or instrument is presumed to be fraudulent if:

(1) the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:

(A) a purported court or a purported judicial entity not expressly created or established under the constitution or the laws of this state or of the United States; or

(B) a purported judicial officer of a purported court or purported judicial entity described by Paragraph (A); or

(2) the document or instrument purports to create a lien or assert ***a claim against real or personal property or an interest in real or personal property*** **and**:

(A) is *not* a document or instrument *provided for* by the constitution or laws of this state or of the United States;

(B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or

(C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or of the United

States.

(d) If a county clerk believes in good faith that a document filed with the county clerk to create a lien is fraudulent, the clerk shall:

(1) request the assistance of the county or district attorney to determine whether the document is fraudulent before filing or recording the document;

(2) request that the prospective filer provide to the county clerk additional documentation supporting the existence of the lien, such as a contract or other document that contains the alleged debtor or obligor's signature; and

(3) forward any additional documentation received to the county or district attorney.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997. Amended by Acts 2005, 79th Leg., ch. 407, Sec. 1, eff. Sept. 1, 2005.

(all emphasis added)

Sec. 51.902. ACTION ON FRAUDULENT JUDGMENT LIEN.

(a) A person against whom a purported judgment was rendered who has reason to believe that a document previously filed or recorded or submitted for filing or for filing and recording is fraudulent may complete and file with the district clerk a motion, verified by affidavit by a completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, that contains, at a minimum, the information in the following suggested form:

MISC. DOCKET NO. _____

In Re: A Purported Judgment Lien Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Motion for Judicial Review of a Documentation Purporting to Create a Judgment Lien

Now Comes (name) and files this motion requesting a judicial determination of the status of a court, judicial entity, or judicial officer purporting to have taken an action that is the basis of a judgment lien filed in the office of said clerk, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the person against whom the purported judgment was rendered.

II.

On (date), in the exercise of the county clerk's official duties as County Clerk of (county name) County, Texas, the

county clerk received and filed or filed and recorded the documentation attached hereto and containing (number) pages. Said documentation purports to have been rendered on the basis of a judgment, act, order, directive, or process of a court, judicial entity, or judicial officer called therein "(name of purported court, judicial entity, or judicial officer)" against one (name of purported debtor).

III.

Movant alleges that the purported court, judicial entity, or judicial officer referred to in the attached documentation is one described in Section 51.901(c)(1), Government Code, as not legally created or established under the constitution or laws of this state or of the United States, and that the documentation should therefore not be accorded lien status.

IV.

Movant further attests that the assertions contained herein are true and correct.

PRAYER

Movant requests the court to review the attached documentation and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, must be as follows:

THE STATE OF TEXAS

AFFIDAVIT

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

"My name is _____. I am over 21 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify.

I further attest that the assertions contained in the accompanying motion are true and correct."

Further affiant sayeth not.

_____

SUBSCRIBED and SWORN TO before me, this _____ day of _____, _____.

_____

NOTARY PUBLIC, State of Texas

Notary's printed name:

_____

My commission expires:

_____

(c) A motion filed under this section may be ruled on by a ***district*** judge having jurisdiction over real property matters in the county where the subject documentation was filed. **The court's finding may be made solely on a review of the documentation attached to the movant's motion and without hearing any testimonial evidence.** [3] **The court's review may be made ex parte without delay or notice of any kind.** [4] **The court's ruling on the motion, in the nature of a finding of fact and a conclusion of law, is unappealable if it is substantially similar to the form suggested in Subsection (g).**

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[3] [N.B. *Cf.* TEX. R. CIV. P. 166a; FED. R. CIV. P. 56. RJF]

[4] [N.B. Even summary judgment requires Notice. RJF]

(d) The district clerk may not collect a filing fee for filing a motion under this section.

(e) After reviewing the documentation attached to a motion under this section, the district judge shall enter an appropriate finding of fact and conclusion of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed.

(f) The county clerk may not collect a filing fee for filing a district judge's finding of fact and conclusion of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

MISC. DOCKET NO. _____

In Re: A Purported Judgment Lien Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Judicial Finding of Fact and Conclusion of Law Regarding a Documentation Purporting to Create a Judgment Lien

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion verified by affidavit of (name) and the documentation attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation under the authority vested in the court under Subchapter J, Chapter 51, Government Code.

The court finds as follows (only an item checked and initialed is a valid court ruling):

_____ The documentation attached to the motion herein refers to a legally constituted court, judicial entity, or judicial officer created by or established under the constitution or laws of this state or of the United States. This judicial finding and conclusion of law does not constitute a finding as to any underlying claims of the parties.

_____ The documentation attached to the motion herein DOES NOT refer to a legally constituted court, judicial entity, or judicial officer created by or established under the constitution or laws of this state or of the United States. There is no valid judgment lien created by the documentation.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its finding of fact and conclusion of law to a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject document.

SIGNED ON THIS THE _____ DAY OF _____.

_____
DISTRICT JUDGE
_____ JUDICIAL DISTRICT
_____ COUNTY, TEXAS

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997.
(all emphasis added)

Sec. 51.903. ACTION ON FRAUDULENT LIEN ON PROPERTY.

(a) A person who is the purported debtor or obligor or who owns real or personal property or an interest in real or personal property and who has reason to believe that the document purporting to create a lien or a claim against the real or personal property or an interest in the real or personal property previously filed or submitted for filing and recording is fraudulent may complete and file with the ***district*** clerk a motion, verified by affidavit by a completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, that contains, at a minimum, the information in the following suggested form:

MISC. DOCKET NO. _____

In Re: A Purported Lien or Claim Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Motion for Judicial Review of Documentation or Instrument Purporting to Create a Lien or Claim

Now Comes (name) and files this motion requesting a judicial determination of the status of documentation or an instrument purporting to create an interest in real or personal property or a lien or claim on real or personal property or an interest in real or personal property filed in the office of the Clerk of (county name) County, Texas, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the purported obligor or debtor or person who owns the real or personal property or the interest in real or personal property described in the documentation or instrument.

II.

On (date), in the exercise of the county clerk's official duties as County Clerk of (county name) County, Texas, the county clerk received and filed and recorded the documentation or instrument attached hereto and containing (number) pages. Said documentation or instrument purports to have created a lien on real or personal property or an interest in real or personal property against one (name of purported debtor).

III.

Movant alleges that the documentation or instrument attached hereto is fraudulent, as defined by Section 51.901(c)(2), Government Code, and that the documentation or instrument should therefore not be accorded lien status.

IV.

Movant attests that assertions herein are true and correct.

V.

Movant does not request the court to make a finding as to any underlying claim of the parties involved and acknowledges that this motion does not seek to invalidate a legitimate lien. Movant further acknowledges that movant may be subject to sanctions, as provided by Chapter 10, Civil Practice and Remedies Code, if this motion is determined to be frivolous.

PRAYER

Movant requests the court to review the attached documentation or instrument and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, must be as follows:

THE STATE OF TEXAS

AFFIDAVIT

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

"My name is _____. I am over 21 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify.

I further attest that the assertions contained in the accompanying motion are true and correct."

Further affiant sayeth not.

_____

SUBSCRIBED and SWORN TO before me, this _____ day of _____, _____.

_____

NOTARY PUBLIC, State of Texas

Notary's printed name:

_____

My commission expires:

_____

(c) A motion under this section may be ruled on by a district judge having jurisdiction over real property matters in the county where the subject document was filed. **The court's finding may be made solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence.** [5] **The court's review may be made ex parte without delay or notice of any kind.** [6] An appellate court shall expedite review of a court's finding under this section.

(d) The district clerk may not collect a filing fee for filing a motion under this section.

(e) After reviewing the documentation or instrument attached to a motion under this section, the district judge shall enter an appropriate finding of fact and conclusion of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed. A copy of the finding of fact and conclusion of law shall be sent, by first class mail, to the movant and to the person who filed the fraudulent lien or claim at the last known address of each person within seven days of the date that the finding of fact and conclusion of law is issued by the judge.

(f) The county clerk may not collect a fee for filing a district judge's finding of fact and conclusion of law under this section.

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[5] [N.B. *Cf.* TEX. R. CIV. P. 166a; FED. R. CIV. P. 56. RJF]

[6] [N.B. Even summary judgment requires Notice. RJF]

(g) A suggested form order appropriate to comply with this section is as follows:

MISC. DOCKET NO. _____

In Re: A Purported Lien or Claim Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Judicial Finding of Fact and Conclusion of Law Regarding a Documentation or Instrument Purporting to Create a Lien or Claim

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion, verified by affidavit, of (name) and the documentation or instrument attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation or instrument under the authority vested in the court under Subchapter J, Chapter 51, Government Code.

The court finds as follows (only an item checked and initialed is a valid court ruling):

_____ The documentation or instrument attached to the motion herein *IS asserted against real or personal property or an interest in real or personal property* and:

(1) IS provided for by specific state or federal statutes or constitutional provisions;

(2) IS created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by consent of an

agent, fiduciary, or other representative of that person; or

(3) IS an equitable, constructive, or other lien imposed by a court of competent jurisdiction created or established under the constitution or laws of this state or of the United States.

_____ The documentation or instrument attached to the motion herein:

(1) IS NOT provided for by specific state or federal statutes or constitutional provisions;

(2) IS NOT created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the law of this state or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;

(3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under the constitution or laws of this state or the United States; ***or***

(4) IS NOT asserted against real or personal property or an interest in real or personal property. [7] There is no valid lien or claim created by this documentation or instrument.

This court makes no finding as to any underlying claims [8] of the parties involved, and expressly limits its finding of fact and conclusion of law to the review of a ministerial act. The

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[7] [N.B. So, what are we here for, then? RJF]

[8] [N.B. What is tested by the "not ... provided for" standard? The lien/claim, or the document/instrument? If it's solely the document/ instrument, then "Notices of Lien" are now fraudulent documents/ instruments. If it's the lien/claim, then such ruling most certainly ***does*** go ***directly*** to the merits of the lien/claim; here, without Notice, opportunity to be heard, etc. RJF]

county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation or instrument was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject documentation or instrument.

SIGNED ON THIS THE _____ DAY OF _____.

_____
DISTRICT JUDGE
_____ JUDICIAL DISTRICT
_____ COUNTY, TEXAS

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997.

(all emphasis added)

Rule 14.1(i)(vi)—Additional Essential Materials

Reference to the Record is adequate.

Appendix B—State Statute Compendium

Alabama	No discernable statutory scheme.
Alaska	("nonconsensual common law liens") ALASKA STAT. §§ 09.45.161, 09.45.164 ((b) requires both Notice and opportunity to be heard), 09.45.167. N.B. The following is fairly representative of the definitions. § 09.45.169 Definitions. (2) "nonconsensual common law lien" means a lien on real or personal property that (A) is **not provided for** by a specific state or federal statute; (B) does not depend on the consent of the owner of the property affected for its existence; and (C) is not an equitable, constructive, or other lien imposed by a court recognized under state or federal law[.] (N.B. Virtually same language and concept as in the Texas statute, but a ***completely*** different context and application.) § 11.46.550 (The "**not provided for**" language is excessively overbroad; this one runs into same type of problems as TEX. PENAL CODE § 32.49). § 34.35.950 (more on "nonconsensual common law liens").

American Samoa	No discernable statutory scheme.
Arizona	("nonconsensual common law liens") ARIZ. REV. STAT. § 33-420 ((A) damages, treble damages; (B) suit to clear title, implies Notice and opportunity to be heard; (C) damages for refusal to release; (D) liens not affirmatively authorized are presumed groundless; (E) class 1 misdemeanor), 33-421.
Arkansas	No discernable statutory scheme. ARK. CODE ANN. § 18-60-503(b).
California	No discernable statutory scheme. *Cf.* CAL. CIV. CODE §§ 3479 (nuisance), 3480, 3481, 3482, and 3501, 3502 (this is certainly one remedy, but in this particular context, it seems a bit drastic, likely triggering both stated exceptions), 3503.
Colorado	No discernable statutory scheme. COLO. REV. STAT. 38-35-109(3).
Connecticut	(invalid lien) CONN. GEN. STAT. § 49-51 ("invalid lien").
Delaware	No discernable statutory scheme.
District of Columbia	No discernable statutory scheme.
Florida	No discernable statutory scheme. FLA. STAT. § 843.0855 ("legal process" includes "lien"; criminal provisions).
Georgia	No discernable statutory scheme.

Georgia (cont'd)	GA. CODE ANN. §§ 23-3-40, (quia timet, as applied to "other iniquitous deed or other writing"), 23-3-41, 23-3-42, 23-3-43, 23-3-44.
Guam	No discernable statutory scheme.
Hawaii	("nonconsensual common law liens") HAW. REV. STAT. §§ 507D-1 (purpose), 507D-2 ("nonconsensual common law lien" defined), 5007D-3, 507D-4 ((a) suit to challenge validity, to follow rules for injunctions and temporary injunctions, i.e., Notice and opportunity to be heard), 507D-5, 507D-6, 507D-7 (damages, injunctive relief). N.B. No directly related criminal charge.
Idaho	("nonconsensual common law liens") IDAHO CODE §§ 45-1701 ((3) definition of "nonconsensual common law lien"), 45-1702, 45-1703 (suit to challenge validity, requires Notice and opportunity to be heard), 45-1704, 45-1705 (damages). N.B. No directly related criminal charge.
Illinois	No discernable statutory scheme. 720 ILL. COMP. STAT. 5/32-13 ("cloud on title") (class A misdemeanor).
Indiana	("common law liens") IND. CODE §§ 32-28-13-1 (definition of "common law lien"), 32-28-13-2, 32-28-13-3, 32-28-13-4 (N.B. Legal reality exists in Indiana), 32-28-13-5, 32-28-13-6 (N.B.

Indiana (cont'd)	Common sense exists in Indiana), 32-28-13-7 (N.B. Common sense exists in Indiana), 32-28-13-8, 32-28-13-9 (damages), 32-33-18-1 (process regarding personal property is the same). N.B. No directly related criminal charge.
Iowa	("nonstatutory liens") IOWA CODE §§ 575.1 ((.2.b) hearing required to determine validity prior to filing; Notice and opportunity to be heard; (.2.b(4)) damages). N.B. No directly related criminal charge.
Kansas *The Texas statute of focus, here, § 51.903, is circa 1997. This is circa 1998. As a brilliant and very well liked college professor would say before each exam, "Don't copy your neighbor's wrong answer."*	(expedited determination of validity) KAN. STAT. ANN. § 58-4301 ((a)(1) motion-based original proceeding; *cf.* TEX. GOV'T CODE 51.903; (b) *ex parte*, no Notice; *cf.* TEX. GOV'T CODE 51.903; (e) presumption of fraud; *cf.* TEX. GOV'T CODE 51.901). Forms: <http://www.kscourts.org/council/statutoryforms.htm>. N.B. In the Findings form, note (1) the *affirmative* finding of a claim on property and (2) its *con*junctive relation with the exceptions (which, themselves, should be *con*junctively, not *dis*junctively, joined). N.B. No directly related criminal charge.
Kentucky	No discernable statutory scheme. § 434.155 (filing illegal lien, class D felony, then class C, then class B).

Louisiana	No discernable statutory scheme.
Maine	No discernable statutory scheme.
Maryland	No discernable statutory scheme.
Massachusetts	No discernable statutory scheme.
Michigan	No discernable statutory scheme.
Minnesota	("nonconsensual common law liens") MINN. STAT. §§ 270C.26 ((1); (2) nonconsensual common law lien naming state commissioner of revenue or that department; (3) civil penalty, collected per tax collection process). §§ 514.99.1 ((c) definition of "nonconsensual common law lien"), 514.99.2, 514.99.3 (petition for release of lien, requires Notice and opportunity to be heard), 514.99.4, 514.99.5 (damages, punitive damages). N.B. No directly related criminal charge.
Mississippi	No discernable statutory scheme.
Missouri	("nonconsensual common law liens") MO. REV. STAT. §§ 428.105.1 ((3) definition of "nonconsensual common law lien"), 428.110, 428.115 (suit to prove validity of lien not allowed filed), 428.120 (suit to invalidate lien, requires Notice and opportunity to be heard), 428.125 (clarity of Notice), 428.130, 428.135 (civil damages). Criminal charge—§ 575.130.4, .5 (class B misdemeanor).

Montana	("nonconsensual common law liens") MONT. CODE. ANN. §§ 27-1-1501, 27-1-1502 (purpose), 27-1-1503 (civil action not dependent on criminal case), 27-1-1505 ((1) definition of "nonconsensual common law lien"; (3) suit (implies Notice and opportunity to be heard); (4) damages). N.B. No directly related criminal charge.
Nebraska	("nonconsensual common law liens") NEB. REV. STAT. §§ 52-1901 (definition of "nonconsensual common law lien"), 52-1902 (damages, including slander of title via § 76-296), 52-1903 (filing ***shall*** be refused), 52-1904 (suit to strike, implies Notice and opportunity to be heard). N.B. No directly related criminal charge.
Nevada	(frivolous or excessive notice of lien) NEV. REV. STAT. § 108.2275 ((1) and (2), motion for motion-based original proceeding; (3) and (4), Notice and opportunity to be heard; (5) multipurpose provision; (6) rulings, attorney's fees, costs; (7), (8), (9). N.B. No directly related criminal charge.
New Hampshire	No discernable statutory scheme. N.H. REV. STAT. § 638:14 (simulation of legal process, "writing" includes "lien"; misdemeanor).
New Jersey	No discernable statutory scheme.

New Mexico	(notice of invalid lien) N.M. STAT. ANN. § 48-1A-6 ((A), (B) filing of notice of invalid lien). N.B. No directly related criminal charge.
New York	No discernable statutory scheme.
North Carolina	(claim of lien) N.C. GEN. STAT. §§ 44A-12.1 ((a) clerk not to file; (b) documents filed don't affect title; (c) class 1 misdemeanor).
North Dakota	("nonconsensual common law liens") N.D. CENT. CODE §§ 35-35-01 (definition of "nonconsensual common law lien"), 35-35-02 (class B misdemeanor), 35-35-03, 35-35-04 (suit to compel filing of rejected lien (implied presumption of invalidity)), 35-35-05 (suit to declare lien invalid (Notice and opportunity to be heard)), 35-35-06 (civil damages).
Ohio	No discernable statutory scheme.
Oklahoma	No discernable statutory scheme.
Oregon	(invalid claim of encumbrance) OR. REV. STAT. § 87.920 (documents not specifically required or authorized are filed). §§ 205.450 (definitions of "encumbrance", "valid claim of encumbrance"), 205.455 ((4) notice of invalid encumbrance; (8) effect), 205.460 (suit challenging validity; Notice and opportunity to be heard; (7) and (8)—parties not subject to this procedure), 205.465, 205.470 (damages).

Oregon (cont'd)	§ 162.355 (simulation of legal process, includes lien; class C felony).
Pennsylvania	No discernable statutory scheme.
Rhode Island	No discernable statutory scheme. R.I. GEN. LAWS § 11-42-5 (simulating legal process, "legal process" includes "lien"; (3) felony, 5 years, $5,000).
South Carolina	No discernable statutory scheme.
South Dakota	No discernable statutory scheme. S.D. CODIFIED LAWS § 22-11-28 (counterfeit lien; "Lack of belief in the jurisdiction or authority of the state or of the United States is no defense to a prosecution under this section.").
Tennessee	No discernable statutory scheme.
Texas	*See* App. A.
Utah	("wrongful lien") UTAH CODE ANN. §§ 38-9-1 ((6) definition of "wrongful lien"), 38-9-2, 38-9-3, 38-9-4 (damages, treble damages), 38-9-6 (suit to have rejected lien filed), 38-9-7 (suit to nullify lien, requires Notice and opportunity to be heard). §§ 38-9a-101, 38-9a-102 (definition of "wrongful lien"), 38-9a-201 (suit for injunction), 38-9a-202 (ex parte injunction), 38-9a-203 (hearing on ex parte injunction), 38-9a-204 (ex parte becomes full injunction), 38-9a-205 (non-exclusive remedies). § 76-6-503.5 (direct criminal charge). § 76-8-414 (indirect criminal charge).

Vermont	No discernable statutory scheme.
Virgin Islands	No discernable statutory scheme.
Virginia	No discernable statutory scheme.
Washington	("nonconsensual common law liens") WASH. REV. CODE. §§ 60.70.010 (purpose, definition of "nonconsensual common law lien")), 60.70.020, 60.70.030, 60.70.040, 60.70.050, 60.70.060 (suit challenging lien requires Notice and opportunity to be heard), 60.70.070 ("nonconsensual common law liens").
West Virginia *The Texas statute of focus, here, § 51.903, is circa 1997. These are circa 1999. As a brilliant and very well liked college professor would say before each exam, "Don't copy your neighbor's wrong answer."*	("nonconsensual common law liens") W. VA. CODE §§ 38-16-101, 38-16-102, 38-16-103, 38-16-104, 38-16-105, 38-16-106 (definition of "nonconsensual common law lien"), 38-16-107, 38-16-108, 38-16-201, 38-16-202, 38-16-301, 38-16-302, 38-16-303, 38-16-304, 38-16-305, 38-16-306, 38-16-401 (*cf.* TEX. GOV'T CODE § 51.901), 38-16-402 (*cf.* TEX. GOV'T CODE § 51.902, complete with "no Notice" language *and* "suggested form"), 38-16-403 (*cf.* TEX. GOV'T CODE § 51.903, complete with "no Notice" language *and* "suggested form" with identical language, including item (4) *and* its *dis*junctive relation with items (1), (2), and (3)), 38-16-404, 38-16-405, 38-16-501 (damages), 38-16-502, 38-16-503, 38-16-504, 38-16-505, 38-16-506.
	§§ 61-5-27 (indirectly related criminal charges), 61-5-27a (directly related criminal charges).

Wisconsin	No discernable statutory scheme. WIS. STAT. § 943.60 (indirectly related criminal charge).
Wyoming	(false or frivolous liens) WYO. STAT. ANN. § 29-1-311 ((a), (b) petition to remove, Notice and opportunity to be heard; (b)(ii) and (iv) damages; (c) misdemeanor).

Note: This compendium is thorough but not exhaustive. This study is limited to materials available on-line. However, this is adequate to illustrate these ideas:

(1) the lien-filing phenomenon is national;

(2) there are multiple responses, ranging from what may be "no response" at all to making it a five-year felony;

(3) of the schemes studied here, Indiana's is the most realistic and efficient;

(4) Kansas (1998) and West Virginia (1999) have implemented the same scheme as Texas (1997);

(a) all three of them rely on the "not ... provided for" standard;

(b) all three of them very intentionally, even defiantly, violate Due Process and Separation of Powers, with the *ex parte*, star chamber approach, which renders the presumption of fraud irrebutable; and

(c) while the Kansas *form* at least follows/matches its *statute*, which requires that there ***be*** a claim on property, even *it* doesn't track the logic involved with the statute's stated exceptions, ***all*** of which must be negated; and, ultimately,

(5) ***not one*** of these 30+ schemes and responses would apply to curse or to bless RJF's exclusively federal *in rem* claim, lien, or Notice of Lien.

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(2)

No. 07-171

FILED
OCT 11 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
SUPREME COURT OF THE UNITED STATES

IN RE A PURPORTED LIEN OR CLAIM AGAINST COLLIN COUNTY CLERK BRENDA TAYLOR

(originally submitted as Florance v. Taylor)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

RULE 44.2 PETITION FOR REHEARING
SUB NOMINE

RICHARD JOHN FLORANCE, JR.
1908 VASSAR DRIVE
RICHARDSON, TEXAS, 75081

Rule 44.2 Petition for Rehearing Sub Nomine

RJF petitions for rehearing sub nomine as follows:

Certificate of Good Faith

By my signature below, I certify that the grounds asserted in this petition for rehearing are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented and that it is filed in good faith and not even remotely for purposes of delay.

Parties:

Defendant-Appellant-Petitioner

RICHARD JOHN FLORANCE, JR.

Plaintiffs-Appellees-Respondents

STATE OF TEXAS

BRENDA TAYLOR, Collin County Clerk
ROBERT J. DAVIS with
MATTHEWS, et al., LLP

Original Case: No. 07-171, Florance v. Taylor

Decision Date: 1 October 2007 [+25: 26 October]

Extension: 16 October [+15: 31 October]

Intervening events motivating this petition:

A. On 13 August, the *federal* appellate court reinstated the Removal of the related criminal case to the federal trial court. *See* No. 07-40130, State of

Texas v. Florance (5th Cir.).

B. On 31 August, the *state* appellate court entered a ruling in State's appeal of that same related criminal case (No. 05-07-00088-CR, State of Texas v. Florance) ("88") that subtly raises a question as to the decision in the civil case (this case). Key, the opinion in "88" is unpublished, and it refers to the published opinion appealed in No. 07-171, but only once, in a footnote, and by the appellate court's case number.

Substantial grounds not previously presented:

1. No Standing. What's in a name? The case style of the trial and appellate court proceedings comes directly from the statutory proposed form. That case style hides the true party in interest in TAYLOR's theory of the case. By asserting the reality in the style, which was the *de facto* sub nomine that is corrected here, RJF intended to clarify the parties, thus the legal theories, for this proceeding. However, that *de facto* sub nomine case style change may have added more problems than solutions.

Why the case style change originally? As is addressed in some detail in the petition for "88", presently in the printing stage, the party disclosed in "88" but otherwise hidden *here* is State of Texas. But, State has no interest in this case; hence, the *de facto* sub nominee case style change.

So, to back up a step or two to address the case below even more directly, State has no standing; thus, the trial court, no subject matter jurisdiction.

For State to have standing, State must have an "actual grievance". *Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004). For *State* to have an "actual grievance", *TAYLOR* has to have

acted *within* the scope. In short, this "In re" case style masks State's purporting to be the actual plaintiff asserting a claim or defense on behalf of an officer, employee or agent. Where there's no question that the officer acted within the scope, there's no question that State would have standing. However, and as discussed in the petition for "88", unless State is confessing to be organized crime, State has no standing where the officer committed or assisted a crime. Assisting in criminal Record-tampering is not even remotely *within* the scope. No clerk may tamper with the Record; no elected Clerk may tamper with the Record via agency, i.e., "by remote", i.e., through any employee; and no judge may assign any clerk, elected or employed, the task of criminal Record-tampering. In short, one more fact that is irrebuttably presumed in this ex parte, star chamber process is that the officer acted *within* the scope. Thus, irrebuttably and falsely presumed, not proved, and impossible to prove, is State's standing (to show up on TAYLOR's behalf, at all).

2. Due Process. Speaking of burden shifting, the ex parte procedure effectively supplies the claim. Thus, the "motion" that "starts" the case is a "response". *Cf. Gaar v. Quirk*, 86 F.3d 451 (5th Cir. 1996) (doctor anticipating malpractice claim filed preemptive suit in federal court; even though he was the plaintiff, the reality analysis treated him as the defendant, thus the suit as a Removal; federal defense doesn't support Removal). So, State shows up asserting defenses with the "motion", either to dismiss or for summary judgment. Thus, new here is that State's affirmative defense, whether it sounds in fraud or immunity, is *presumed*, not *proved*. *But see Dixon v.*

United States, __ U.S. __, 126 S. Ct. 2437 (2006). Further, facts in the (supplied) complaint are to be presumed *true* for analysis of a motion to dismiss. *See e.g., Illinois ex rel. Madigan v. Telemarketing Assoc., Inc.*, 538 U.S. 600 (2003) (Part III); *Bell Atlantic, Corp v. Twombly*, __ U.S. __, 127 S. Ct. 1955 (2007). But this ex parte, star chamber procedure irrebuttably presumes the (supplied) claim ***false***. Moreover, inferences are to be presumed *against* the summary judgment movant. *Beard v. Banks*, 542 U.S. 406 (2004) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)); *Scott v. Harris*, __ U.S. __, 127 S. Ct. 1769 (2007) (citing *United States v. Diebold*, 369 U.S. 654, 655 (1962)). But this ex parte, star chamber procedure irrebuttably presumes evidence ***for*** the movant.

3. "No evidence." Also suggested in the petition for "88" is the evidentiary perspective that the "Notice of Lien" document is not even admissible evidence. This directly and all the more adversely affects State's standing, which it never had, anyway, as discussed above. This also directly supports the fact of burden shifting.

Remedies Requested

RJF requests

1. That this Court grant this petition, thus, the writ of certiorari, and take jurisdiction of this matter;
2. That this Court rule TEX. GOV'T CODE §§ 51.901, 51.902, and 51.903 void and unenforceable, for violations of Due Process and/or Separation of Powers;

3. If the statutes are valid and enforceable, that this Court rule that the underlying claim, lien, and Notice of Lien constitute an exclusively federal *in rem* matter, if there is evidence, at all;
4. That this Court vacate the state appellate court's judgment and remand this case to the state district court with instructions to dismiss for lack of jurisdiction;
5. The opportunity to brief any additional issues the Court may identify;
6. The non-argument calendar. Oral argument is not expected to aid in the resolution of these issues;
7. That costs be taxed to TAYLOR; and
8. Any and all other relief at law, in equity or sui generis to which he may show himself justly entitled.

Respectfully submitted and Certified,

/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

Verification

Per 28 U.S.C. § 1746, I, Richard John Florance, Jr., depose and declare (or certify, verify or state), under penalty of perjury, that I am at least 21 years of age, that I am competent to make this Affidavit, that I have personal knowledge of these facts, and that these facts are true and correct.

The facts stated in this Rule 44.2 Petition for Rehearing Sub Nomine are true and correct.

Further, Declarant sayeth not.

Executed on this the _____ of October, 2007

/s/ Richard John Florance, Jr.
Richard John Florance, Jr., Declarant

Certificate of Service

By my signature below, per Rule 29.5(c), I certify, pursuant to 28 U.S.C. § 1746, that as of the _____ day of October, 2007, I have served three (3) true and correct copies of this petition for rehearing by certified mail, return receipt requested, or by 3-day (or faster) delivery service, as follows:

Hon. Greg Abbott
Office of Attorney General
STATE OF TEXAS
300 West 15th Street
Austin, TX 78711-2548

BRENDA TAYLOR
Via counsel of Record below
ROBERT J. DAVIS
MATTHEWS, et al., LLP
8131 LBJ Freeway, Suite 700
Dallas, TX 75251

Given the Statutory Challenges, also served with three (3) copies are the following:

Hon. Paul D. Clement
Solicitor General, U.S.
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001
(Amicus)

Complimentary service of one (1) copy each is also made as follows:

Hon. Paul J. Morrison
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120 SW 10th Street
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Hon. Darrell V. McGraw, Jr.
Attorney General
STATE OF WEST VIRGINIA
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Dallas, TX 75201
(Nos. 05-07-00088-CR,
05-06-00992-CV)

Dave Maland
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101 E. Pecan, Room 216
Sherman, TX 75090
(No. 4:06-CV-510)

Stacey Kemp, Clerk
County Court at Law No. 2
200 S. McDonald, Suite 120
McKinney, TX 75069
(No. 002-81238-06)

Executed on the _____ day of October, 2007

/s/ Richard John Florance, Jr.
Richard John Florance, Jr.